



## MEMORANDUM

Agenda Item No. 11(A)(20)

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**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

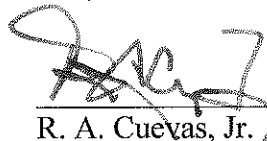
**DATE:** July 3, 2012

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Resolution authorizing the extension  
of a reverter on certain property  
owned by Habitat for Humanity in  
accordance with Florida Statute  
125.38; and authorizing execution of  
documents necessary for such  
purpose

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The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Dennis C. Moss.

  
\_\_\_\_\_  
R. A. Cuevas, Jr.  
County Attorney

RAC/cp

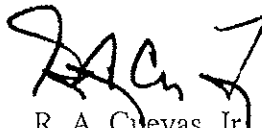


# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**DATE:** July 3, 2012

**FROM:**   
R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Agenda Item No. 11(A)(20)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_ ) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 11(A)(20)  
7-3-12

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING THE EXTENSION OF A  
REVERTER ON CERTAIN PROPERTY OWNED BY  
HABITAT FOR HUMANITY IN ACCORDANCE WITH  
FLORIDA STATUTE 125.38; AND AUTHORIZING  
EXECUTION OF DOCUMENTS NECESSARY FOR SUCH  
PURPOSE

**WHEREAS**, on October 6, 1998, the Board passed Resolution No. R-1158-98, authorizing the conveyance of a 14.7 acre site (the "Property") to South Miami Heights Community Development Corporation ("SMHCDC") for the development of 45 single family affordable homes and a child care facility; and

**WHEREAS**, on January 5, 2001, a County Deed conveyed title to the Property (as described in the County Deed attached as Exhibit "A") to SMHCDC, which required such construction within five years of the conveyance; and

**WHEREAS**, despite three extensions of time granted by the Board, SMHCDC never completed the development of the Property in accordance with the restrictive covenant, and defaulted under its mortgage with its lender, Bankers Lender Services ("BLS"), resulting in a judgment of foreclosure; and

**WHEREAS**, pursuant to a settlement between the County and BLS (the "Agreement"), the Property was sold at a foreclosure sale, with the winning party taking title to the Property subject to the use restrictions and a three-year reverter (as described in the Agreement attached as Exhibit "B"); and

**WHEREAS**, Habitat for Humanity ("Habitat") obtained title at the foreclosure sale on August 12, 2009, with the winning bid of \$1,200,000; and

**WHEREAS**, SMHCDC appealed the foreclosure judgment contesting the transfer of title to Habitat, which was ultimately concluded in favor of Habitat on May 7, 2012, vesting title to the Property in Habitat; and

**WHEREAS**, because Habitat has been unable to begin the development of the Property due to the pendency of the litigation regarding the ownership of the Property, Habitat has requested the extension of the reverter to provide it the three years originally contemplated by the County in the Agreement (as described in the letter from Habitat attached as Exhibit "C"); and

**WHEREAS**, Habitat agrees to the abide by the existing restrictions governing the use of the Property, including the construction of 45 affordable single family homes and a child day-care facility; and

**WHEREAS**, the Board finds that, pursuant to Section 125.38 of the Florida Statutes, that the Property is required for such use, and that the intended use would promote community interest and welfare,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board adopts the foregoing recitals, and:

Section 1. Approves the extension of the existing reverter on the Property for three years from the effective date of this Resolution, pursuant to Section 125.38 of the Florida Statutes, and authorizes the County Mayor or Mayor's designee to execute any documents deemed necessary by the County Attorney's Office to effectuate this extension.

Section 2. Pursuant to Resolution No. R-974-09, directs the County Mayor or Mayor's designee to record the documents authorized herein in the public records of Miami-Dade County and to provide a recorded copy of these documents to the Clerk of the Board within thirty (30) days of their execution, and further directs the Clerk of the Board to attach and permanently store a recorded copy of the documents together with this resolution.

Section 3. Directs the County Mayor or Mayor's designee to appoint staff to monitor compliance with the terms of the restrictive covenants and Agreement.

The Prime Sponsor of the foregoing resolution is Commissioner Dennis C. Moss. It was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Lynda Bell
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 3<sup>rd</sup> day of July, 2012. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

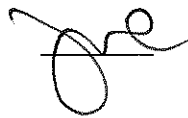
MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

Jorge Martinez-Esteve



OFF REC 19518 PG. 1303

Instrument prepared by and return to:

Elva R. Marin  
Miami-Dade County  
General Services Administration  
111 NW 1st St, Suite 2460  
Miami, FL 33128

01R091982 2001 FEB 27 10:28

DDCSTPDEE 0.60 SURTX 0.00  
HARVEY RUVIN, CLERK DADE COUNTY, FL

Folio No: 30-6912-013-0010

Grantees' Tax ID#: \_\_\_\_\_

### COUNTY DEED

THIS DEED, made this 5<sup>th</sup> day of January, 2001, between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida, whose address is: Stephen P. Clark Center, 111 N.W. 1 Street Suite 17-202, Miami, Florida 33128-1963, party of the first part, and SOUTH MIAMI HEIGHTS COMMUNITY DEVELOPMENT CORPORATION, a Florida not-for-profit corporation, whose address is: 12195 Quail Roost Drive, Building #3, Miami, Florida, party of the second part,

WITNESSETH, that said party of the first part, for and in consideration of the sum of Ten Dollars (\$10.00), to it in hand paid by party of the second part, receipt whereof is hereby acknowledged, does hereby by grant, bargain and sell to party of the second part, its successors and assigns forever, the following described land, lying and being in Miami-Dade County, Florida, to wit:

**LOTS 1-16 BLOCK 1, LOTS 1-16 BLOCK 2, LOTS 1-4 BLOCK 3,  
LOTS 1-9 BLOCK 4, TRACT B AND TRACT C, CARIBBEAN  
PALMS, AS RECORDED IN PLAT BOOK 156 AT PAGE 70 OF  
THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA**

#### SUBJECT TO:

1. Taxes for the year 2000 and subsequent years.
2. Matters appearing on the plat.
3. Existing zoning ordinances and other governmental regulations. Covenants, conditions, easements and restrictions of record, if any, but this shall not operate to reimpose same.
4. Mortgages and notes provided to Miami-Dade County, rental regulatory agreements, covenants of restriction, covenants, conditions, easements and restrictions of record, if any, but this shall not operate to reimpose same.

EXHIBIT "A"

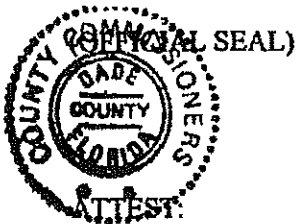
10.10

7

It is the express intention of the party of the second part, South Miami Heights Community Development Corporation, to construct affordable single family homes and a child day-care facility on the Property. If this land is not developed as affordable single family housing and a child day-care facility within five (5) years from the date of this conveyance, the Property shall automatically revert to the party of the first part, Miami-Dade County, its successors and assigns, and Miami-Dade County shall be entitled and have the right to immediate possession thereof.

This grant conveys only the interest of Miami-Dade County and its Board of County Commissioners in the Property herein described and shall not warrant title thereto.

IN WITNESS WHEREOF, the said party of the first part, has caused these presents to be executed in its name by its Board of County Commissioners acting by the Mayor of said Board, and attested by the Clerk or Deputy Clerk, the day and year aforesaid.



HARVEY RUVIN, CLERK

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

By: *Elizabeth Hurst*  
Deputy Clerk

By: *Alexander Penelas*  
Alexander Penelas, Mayor

The foregoing was authorized and approved by Resolution No. R-1158-98 of the Board of County Commissioners of Miami-Dade County, Florida, on the 6<sup>th</sup> day of October, 1998.

Approved to form and legal sufficiency *Harvey*

RECORDED IN OFFICIAL RECORDS BOOK  
OF MIAMI-DADE COUNTY, FLORIDA  
RECORD VERIFIED  
HARVEY RUVIN  
CLERK CIRCUIT COURT



IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 07-27571-CA 24

BANKERS LENDING SERVICES, INC.,

Plaintiff,

v.  
SOUTH MIAMI HEIGHTS  
DEVELOPMENT CORPORATION, et al.,

Defendants.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among Plaintiff, Bankers Lending Services, Inc. ("BLS"), Defendant, Miami-Dade County, Florida ("Miami-Dade County") and Habitat for Humanity of Greater Miami, Inc. ("Habitat"). BLS, Miami-Dade County and Habitat shall be collectively referred to as the "Parties."

Recitals

WHEREAS, on January 5, 2001, Miami-Dade County transferred to South Miami Heights Community Development Corporation ("SMHCDC") certain real property by County Deed, as described therein, which was recorded on February 27, 2001, Official Records Book 19518, page 1303, of the public records of Miami-Dade County, Florida (the "Property"); and

WHEREAS, the County Deed provides, in pertinent part:

if this land is not developed as affordable single family housing and a child daycare facility within five (5) years from the date of this conveyance, the Property shall automatically revert to [Miami-Dade County], and [Miami-Dade County] shall be entitled

EXHIBIT "B"



and have the right to immediate possession thereof. ("Reverter Provision"); and

WHEREAS, on January 1, 2005, SMHCDC borrowed Seven Hundred Fifty Thousand Dollars (\$750,000.00) from BLS, which money was used to payoff existing lenders, liens and taxes, and for site preparation and improvements to be made to the Property, and which loan was secured by a mortgage on the Property, recorded on January 28, 2005, in Official Records Book 23037, page 1540, of the public records of Miami-Dade County, Florida; and

WHEREAS, Miami-Dade County executed and delivered several corrective County Deeds, each containing changes with respect to the Reverter Provision; and

WHEREAS, on August 28, 2007, BLS filed this action against SMHCDC for Breach of Promissory Note, to Foreclose a Mortgage, and for Breach of Construction Loan Agreement; and

WHEREAS, on December 19, 2007, BLS amended its Complaint to add Miami-Dade County as a defendant, as a result of the Reverter Provision; and

WHEREAS, on June 2, 2008, the Court entered a Final Judgment ("Judgment"), which scheduled a judicial foreclosure sale for July 18, 2008; and

WHEREAS, paragraph 2(b) of the Judgment provides:

The Court reserves jurisdiction to hear and determine those issues raised, or which may hereafter be raised concerning the nature and extent of the interest of Miami-Dade County, Florida in the property being foreclosed herein, based upon the Reverter Provision contained in that certain County Deed dated January 5, 2001 and recorded February 27, 2001 in Official Records Book 19518 at page 1303 of the public records of Miami-Dade County, Florida as well as all subsequent corrective County Deeds provided on the property to [SMHCDC]; and

WHEREAS, on July 14, 2008, BLS filed an ex-parte motion to cancel the sale, and on July 17, 2008, the Court entered an order cancelling the judicial foreclosure sale; and

WHEREAS, on September 25, 2008, Miami-Dade County filed a Motion to Vacate Judgment and a Motion to Set Aside, Strike or Release Liens of Mortgages and Pre-judgmental Note; and

WHEREAS, prior to July 18, 2008, Miami-Dade County approved Resolution R-862-08 which agreed to extend the Reverter Provision for a period of three (3) years if Habitat assumed ownership and control of the Property and developed the Property with a child day care center and 45 affordable single family homes; and

WHEREAS, BLS filed a Memorandum in Opposition to the County's Motions; and

WHEREAS, in order to avoid the expense and risk of further litigation, Miami-Dade County, BLS, and Habitat have resolved their dispute, as follows:

NOW THEREFORE, in consideration of the mutual promises, consideration and obligations set forth in this Agreement, the Parties stipulate and agree as follows:

1. The foregoing Recitals are true and correct and are incorporated in this Agreement by reference.

2. Miami-Dade County shall not oppose BLS' Motion to Amend to Final Judgment, to include all amounts BLS claims are due and owing; provided, however, that the amount of the Amended Final Judgment shall not be considered in determining nor affect in any way, the total amount to be paid by Habitat of One Million Two Hundred Thousand Dollars (\$1,200,000.00), plus applicable administrative fees and taxes imposed as a result of the judicial sale of the Property, if Habitat is the successful bidder at the judicial foreclosure sale.

3. The Parties shall jointly move the Court to reschedule the foreclosure sale for a time period between twenty (20) and thirty-five (35) days from the date of execution of this Settlement Agreement.

*[A large diagonal line is drawn across the page, likely indicating a redaction or a placeholder for content.]*



4. Habitat shall bid at the judicial foreclosure sale One Million Two Hundred Thousand Dollars (\$1,200,000.00), which sum shall be in total satisfaction of the Agreed Final Judgment; provided that the judicial sale is conducted in accordance with Florida law so as to enable Habitat to obtain an owner's title insurance policy insuring Habitat for the purchase price at the judicial sale. Habitat's bid of One Million Two Hundred Thousand Dollars (\$1,200,000.00) at the judicial foreclosure sale shall serve to waive and release any claim by Habitat that the sale was not concluded in accordance with Florida law.

5. BLS may bid at the judicial foreclosure sale, but only up to and no more than One Million One Hundred Ninety-nine Thousand Nine Hundred Dollars (\$1,199,900.00). BLS shall bid no higher amount under any circumstances whatsoever. Neither shall any entity, affiliate, subsidiary, assignee, employee, "strawman" or other entity or person(s) working on or for BLS' behalf or at BLS' behest, including any such entity or person(s) that has or have, as a member, officer, employee, assignee, affiliate or subsidiary of, associated with, acting as a "strawman" for, or in anyway benefitting from in any manner whatsoever, a relationship with BLS, its officers, employees, successors, representatives, fiduciaries, successors or assigns, bid any amount whatsoever for the Property at the judicial foreclosure sale. Any violation of this section shall render the judicial sale of the Property null and void, and BLS agrees to file jointly with Miami-Dade County a motion for the Court to enter an Agreed Final Judgment in favor of Miami-Dade County and against BLS determining that the Property has reverted to Miami-Dade County free and clear of all liens and encumbrances including the BLS mortgage and note referenced in the third WHEREAS clause hereinabove. Additionally, BLS and such related entity or person(s) shall forthwith convey any and all interest in the Property by quitclaim deed to Miami-Dade County.

6. If Habitat is the successful bidder at the judicial foreclosure sale, it shall take title in the same manner as any other third party bidder at a judicial foreclosure sale conducted in accordance with Chapter 45, Florida Statutes, *i.e.*, subject to all taxes, etc., and in accordance with Paragraph two (2) hereinabove.

7. If Habitat fails to bid at least One Million Two Hundred Thousand Dollars (\$1,200,000.00) at the judicial foreclosure sale and make such payment as required; and if BLS becomes the owner of the property because of its bid up to One Million One Hundred Ninety-nine Thousand Nine Hundred Dollars (\$1,199,900.00), then Miami-Dade County agrees to join with BLS in filing a motion with the Court to enter an Agreed Final Judgment in favor of BLS and against Miami-Dade County determining that the Reverter Provision, as amended, has been fully satisfied and is no longer effective, *i.e.*, that BLS takes title to the Property without the risk of reversion. Notwithstanding the foregoing termination of the Reverter Provision, BLS shall take title to the Property subject to the County's use restrictions running with the Land, *i.e.*, that the property be developed with a child day care facility and as affordable single family housing. If any entity or person other than Habitat is the successful bidder at the judicial foreclosure sale by bidding in excess of One Million Two Hundred Thousand Dollars (\$1,200,000.00), then the proceeds of the foreclosure sale shall be distributed in accordance with the Amended Final Judgment and Florida law; provided, however, any such successful third party bidder shall take the Property subject to Miami-Dade County's reversionary interest and the use restrictions of the County Deeds, all of which shall survive such judicial foreclosure sale. Provided further, that in the event of a successful third bidder, BLS shall forthwith withdraw any and all objections to the reversion of the Property to Miami-Dade County.

8. Upon Habitat becoming the owner of the Property as a result of its successful bid for the Property at the judicial foreclosure sale, Miami-Dade County, in accordance with Resolution R.862-08, shall deliver and Habitat shall accept a County Deed conveying the Property to Habitat subject to the restriction that the Property be developed with 45 affordable single family homes and a child day care center, together with a three (3) year automatic reverter, which will begin with the recordation of the County Deed, in favor of Miami-Dade County should Habitat fail to comply with the restrictions:

9. The Parties shall bear their own attorneys' fees and court costs in this action.

10. This Agreement shall not be amended or modified except in writing, signed by each of the Parties affected by such amendment or modification.

11. This Agreement, and any issues relating to it or its subject matter, shall be construed in accordance with and governed by the substantive laws of the State of Florida, without regard to the conflict of laws, principals of Florida and any claim related to the Agreement shall be brought only in the Circuit or County Court, as appropriate, in Miami-Dade County, Florida.

12. The Parties agree to execute any and all additional documentation reasonably necessary to complete, effectuate and document this Agreement.

13. The drafting and negotiations of this Agreement have been participated in by each of the Parties for all purposes and this Agreement shall be deemed to have been jointly drafted by each of the Parties. All Parties have consulted with and have had this Agreement reviewed by separate and independent counsel prior to the execution hereof.

14. This Agreement and all obligations and undertakings herein shall be binding upon, and shall inure to the benefit of the Parties, their predecessors, administrators, successors, assigns, and/or anyone claiming by, through or under any of them.



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15. This Agreement may be executed in counterparts, each of which shall be deemed to be an original. Such counterparts, when taken together, shall constitute but one agreement.

16. The Court retains jurisdiction to enforce the provisions of this Settlement Agreement, and any issues that may arise as a result thereof.

DATED this 20<sup>th</sup> day of February, 2009.

Bankers Lending Services, Inc.

Miami-Dade County

By: 

Gustavo Macias, President

By: 

Thomas Goldstein  
Assistant County Attorney

Habitat For Humanity of Greater Miami, Inc.

By: 

Anne E. Manning, Executive Director



# Habitat for Humanity®

## of Greater Miami

*building houses in partnership with God's people in need*

May 15, 2012

Mr. Lester Sola  
Director, Internal Services Department  
111 NW 1<sup>st</sup> Street, Suite 2410  
Miami, FL 33130

Re: Caribbean Palms Request for Extension of Reverter

Dear Lester:

In February, 2009, Habitat for Humanity entered into a settlement agreement with Miami Dade County (07-27571-ca 24) on the parcel referred to as Caribbean Palms. Under said agreement, Habitat agreed to build 45 affordable single family homes as well as a daycare facility on the parcel. The agreement provided Habitat with a three year time period to provide the agreed upon units, as well as the daycare facility.

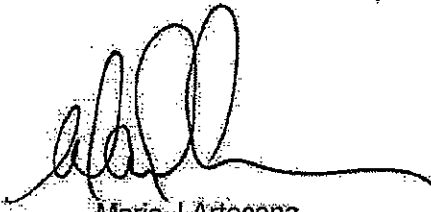
Unfortunately, immediately following the execution of said agreement, the validity of the transaction was challenged in the courts. Given this litigation, under advice of counsel, Habitat delayed any construction activity on Caribbean Palms as the loss of the monetary investment would have been catastrophic to the affiliate. As such, to date no activity has taken place towards the construction of the units.

Recently, the 3rd District Court of Appeals upheld a lower court's decision which gave no validity to the challenge of Habitat's purchase of the land. As such, Habitat is now ready to commence construction of this project. With the approval of the Habitat for Humanity of Greater Miami's Board of Directors, we are hereby requesting an extension of time for completion of this project for a period of three years from the approval of this request. This time extension would provide us with the same amount of time we would have been entitled to had no delays occurred. Habitat remains committed to the terms of the settlement agreement, that is, the completion of a minimum of 45 affordable units as well as the construction of a daycare facility on the premises.

Habitat respectfully requests the assistance of the County Attorney's Office in preparing legislative documentation for approval by the Board of County Commissioners granting us said time extension.

I remain available to provide you any information you may require to make this happen and thank you in advance for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mario J. Artecona', with a long horizontal flourish extending to the right.

Mario J. Artecona  
CEO

Cc: Jorge Martinez-Esteve, Assistant County Attorney